

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****Division of Housing Policy Development**

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**AB 438 Compliance Checklist**  
**Per Government Code Section 65583.1(c)**

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<p>The provisions set forth in Government Code Section 65583.1(c) (AB 438) are applicable <b><u>only</u></b> if a City/County has met at least a portion of the regional share for very low-income (VL) or low-income (L) households in the current or previous planning period.</p> <p>In the current period:          In the previous period:  <b>65583.1(c)(2)</b></p>	<p>Yes ____ No ____          Yes ____ No ____</p>	
<p>Identify the specific source of committed assistance funds. (refer to the definition on page 3.)</p> <p>_____</p> <p>Indicate the amount and date when funds will be dedicated (legally enforceable agreement). \$ _____ Date: _____</p> <p><b>65583.1(c)(1)(A)</b></p>		
<p>Do the units qualify for a 1 to 1 reduction of the regional share of up to 25% of the VL &amp; L income need by having affordability covenants greater than 20 years?</p> <p><b>65583.1(c)(1)</b></p>	<p>Yes ____ No ____</p>	
<p>Unit costs/rents are to be affordable to:</p> <p>Very low-income households          Low-income households</p> <p><b>65583.1(c)(1)</b></p>	<p>Yes ____ No ____          Yes ____ No ____</p>	
<p>Indicate the total number of units to be assisted with committed assistance funds (by funding source).</p> <p>VL income units ____          L income units ____</p> <p>Will the funds be sufficient to develop the identified units at affordable costs or rents?</p> <p><b>65583.1(c)(1)(B)</b></p>	<p>Yes ____ No ____</p>	
<p><b>Note: If you do not meet <u>all</u> of the general requirements listed above, your jurisdiction is not eligible to utilize the adequate sites provisions set forth in Government Code Section 65583.1(c).</b></p>		
<p><b>(A) Substantially Rehabilitated Units</b></p> <p>Include reference to specific program description in HE. _____</p> <p><b>65583.1(c)(1)</b></p>		
<p>Units must result in a net increase of the affordable housing stock.</p> <p><b>65583.1(c)(2)(A)</b></p>	<p>Net # of VL income units ____          Net # of L income units ____</p>	
<p>Are units at imminent risk of loss to affordable housing stock?</p> <p><b>65583.1(c)(2)(A)(i)(I)</b></p>	<p>Yes ____ No ____</p>	

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Will relocation assistance be provided to tenants? Temporary: Permanent: <b>65583.1(c)(2)(A)(i)(II)</b>	Yes ____ No____ Yes ____ No____	
Will tenants will have the right to reoccupy units? <b>65583.1(c)(2)(A)(i)(III)</b>	Yes ____ No____	
Are the units subject to a 3 to 1 substitution rate due to affordability covenants of <u>less than 20 years</u> (but greater than 10)? <b>65583.1(c)(2)(A)(ii)</b>	Yes ____ No____	
Has a court or code enforcement agency found that the units are unfit for human habitation and vacant or subject to being vacated for 120 days because of following health and safety conditions (must satisfy a minimum of 4 of the 7 conditions listed below): <b>65583.1(c)(2)(A)(i)(IV)</b>	Yes ____ No____	
(1) Termination extended interruption or serious defect of gas, water or electric utility systems, not caused by the tenant's failure to pay monthly bill.	Yes ____ No____	
(2) Serious defects or lack of adequate space and water heating.	Yes ____ No____	
(3) Serious rodent, vermin or insect infestation.	Yes ____ No____	
(4) Severe deterioration rendering significant portions of the structure unsafe or unsanitary.	Yes ____ No____	
(5) Inadequate number of garbage receptacles or services.	Yes ____ No____	
(6) Unsanitary conditions (faulty plumbing or sewage disposal ) affecting significant portion of structure.	Yes ____ No____	
(7) Inoperable hallway lighting.	Yes ____ No____	
Affordability and occupancy restrictions will be maintained for $\geq$ 20 years. <b>65583.1(c)(2)(A)(ii)</b>	Yes ____ No____	
<b>(B) Multifamily rental units are to be converted from non-affordable to affordable.</b> Include reference to specific program description in HE. <b>65583.1(c)(1)</b>	Program No.: _____	
Will the city/county purchase the unit(s) with the use of committed assistance, OR will the city/county purchase affordability covenants? <b>65583.1(c)(2)(B)</b>	Yes ____ No____ Yes ____ No____	
Project consists of multifamily rental complex of 16+ units converting from non-affordable to affordable. <b>65583.1(c)(2)(B)</b>	Yes ____ No____	
Is the acquisition an eminent domain action? <b>65583.1(c)(2)(B)</b>	Yes ____ No____	
Will the units result in a net increase to the affordable housing stock? <b>65583.1(c)(2)(B)</b>	Net # of VL income units added_____ Net # of L income units added_____	

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Are the units currently occupied by VL income or L income households? <b>65583.1(c)(2)(B)(iii)</b>	Yes ____ No____	
Will units will be decent, safe, and sanitary upon occupancy. <b>65583.1(c)(2)(B)(iv)</b>	Yes ____ No____	
Acquisition price is not > 120% of the median price of housing units within the city/county. <b>65583.1(c)(2)(B)(v)</b>	Yes ____ No____	
Affordability and occupancy restrictions will be maintained for not < 30 years. <b>65583.1(c)(2)(B)(vi)</b>	Yes ____ No____	
<b>(C) Affordable Units to be Preserved</b> Include reference to specific program description in HE. _____ <b>65583.1(c)(1)</b>		
Will the city/county purchase the unit(s) with the use of committed assistance? Or, will the city/county purchase affordability covenants? <b>65583.1(c)(2)(C)</b>	Yes ____ No____ Yes ____ No____	
Affordability and occupancy restrictions will be maintained for not < 40 years. <b>65583.1(c)(2)(C)(i)</b>	Yes ____ No____	
Describe/list the specific program that assist in the preservation of units. Federal programs: _____ _____ State programs: _____ _____ Local programs: _____ _____ <b>65583.1(c)(2)(C)(ii)</b>		
City/County, via the public hearing process, must find that the unit(s) is/are eligible and are reasonably expected to convert to market rate during the next 5 years due to termination of subsidies, prepayment, or expiration on use. <b>65583.1(c)(2)(C)(iii)</b>	Yes ____ No____	
Are the units decent, safe, and sanitary? <b>65583.1(c)(2)(C)(iv)</b>	Yes ____ No____	

**DEFINITION: Committed Assistance (alternative sites):** When a local government has entered into a legally enforceable agreement during the first two years of the housing element planning period obligating funds for affordable units available for occupancy within two years of the agreement.

**CHAPTER 796**  
**(Statutes of 1998)**

**PROVISIONS TO PROVIDE FLEXIBILITY IN  
IDENTIFYING ADEQUATE SITES**

Housing element law requires an identification of sites to facilitate the development of housing commensurate with the jurisdiction's share of the regional housing need for all income levels. Where sufficient sites have not been identified, the element must include a program to provide the necessary sites. Chapter 796, by adding Government Code Section 65583.1(c), provides alternative program options to address the adequate sites requirement. Specifically, local governments may meet up to 25 percent of their site requirement by substituting existing units which will be made available or preserved through the provision of committed assistance to low- and very-low-income households at affordable housing costs or affordable rents. To use this provision of the law, *the housing element must include a program to do all of the following:*

- ☐ Identify the specific, existing source of funds to be used to provide committed assistance and dedicate a portion of the funds for this purpose.
- ☐ Describe the number of units to be provided for low- and very low-income households and demonstrate that the amount of funds dedicated is sufficient to provide the units at affordable costs or rent.

Only units to be substantially rehabilitated, converted from nonaffordable to affordable by acquisition of the units or the purchase of affordability covenants, or preserved at affordable housing costs by the acquisition of the units or purchase of affordability covenants are eligible, and must be identified in the program description. Only units that meet the following requirements would qualify:

- **Units to be substantially rehabilitated with committed assistance and that result in a net increase in the stock of housing affordable to low- and very low-income households.** Units must also meet the following requirements to be considered eligible: The unit is at imminent risk of loss to the housing stock, relocation assistance will be provided to any occupants temporarily or permanently displaced and the local government must require that any displaced occupant will have the right to reoccupy the rehabilitated units, and the units have been found by the code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated for at least 120 days because of the existence of at least four of the following conditions (Health and Safety Code Section 17995.3):
- ✓ Termination, extended interruption or serious defects of gas, water or electric utility systems provided such interruption or termination is not caused by the tenant's failure to pay such gas, water or electric bills.
  - ✓ Serious defects or lack of adequate space and water heating.
  - ✓ Serious rodent, vermin or insect infestation.
  - ✓ Severe deterioration, rendering significant portions of the structure unsafe or unsanitary.

- ✓ Inadequate numbers of garbage receptacles or service.
- ✓ Unsanitary conditions affecting a significant portion of the structure as a result of faulty plumbing or sewage disposal.
- ✓ Inoperable hallway lighting.

The rehabilitated units must have long-term affordability covenants and restrictions requiring the units to be available to, and occupied by low- or very-low-income households for at least 20 years or the time required by any applicable federal or state law or regulation.

- **Multifamily units in a rental complex of 16 or more units that are converted from nonaffordable to affordable with committed assistance by acquisition of the unit or the purchase of affordability covenants and restrictions** provided the units are not acquired by eminent domain and provide a net increase in the stock of housing affordable to low- and very low-income households.

To qualify for this requirement the units must be made available at affordable housing costs, the units are not currently occupied by low- or very low-income households, the units are in decent, safe and sanitary conditions when occupied, and the acquisition price is not greater than 120 percent of the median price for housing units in the city or county, and the units will have long-term affordability covenants for not less than 30 years.

- **Units that will be preserved at affordable housing costs to low- or very low-income households with committed assistance from the local government by acquisition of the unit or the purchase of affordability covenants for the units.** Preserved units must have long-term affordability covenants and restrictions for at least 40 years, the units must have received governmental assistance under specified programs, the local government must find, after a public hearing that the unit is eligible and is reasonably expected to convert to non low-income uses, and the units must be decent, safe and sanitary. At the time the units are identified for preservation, they must be available at affordable costs to persons and families of low or very low income.

Generally, units may be substituted one for one. Exceptions include substantially rehabilitated units that have affordability covenants and restrictions of less than 20 years. These units may be substituted at the rate of three units for one. No credit is provided for units with less than 10-year affordability restrictions.

“Committed assistance” is defined as when a local government has entered into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that the units be made available for occupancy within two years of the execution of the agreement.

“Net increase” means only those units that were not provided committed assistance in the immediately prior planning period.

Chapter 796 also requires jurisdictions to document the status of their committed assistance program by the third year of the planning period in the annual report on general plan program implementation. The report should identify the specific units for which committed assistance has been provided or which have been made available to low- and very low-income households and indicate how each unit complies with the applicable requirements. If this report indicates that the jurisdiction has not entered into an enforceable agreement of committed assistance for all the units initially identified, the local government must adopt an amendment to its housing element, by July 1<sup>st</sup> of the fourth year in the planning period, identifying additional adequate sites sufficient to accommodate the number of units for which committed assistance was not provided.

Jurisdictions which do not amend their element to include adequate sites, or which do not complete rehabilitation, acquisition, purchase of affordability covenants, or the preservation of identified units within two years after the committed assistance was provided will be prohibited from identifying substitute units in the next regular housing element update above the number of units actually provided or preserved with committed assistance.

Only those local governments (during the current or immediately prior planning period) that have met some of their share of the regional need for housing affordable to households with low- and very low-income may use this provision of housing element law. Documentation of having met this need includes issuance of a building permit and payment of all development and permit fees, or the unit is eligible to be lawfully occupied.

### **REGIONAL HOUSING NEEDS ALLOCATION**

Chapter 796 also amends Section 65584 to facilitate sub-regional planning. It allows councils of governments to provide sub-regions with their share of the regional housing need, and delegate the responsibility for allocating the housing need to jurisdictions in the sub-region. This delegation of responsibility may occur where the county and all of the cities in the county request the delegation, a joint powers authority is established, or the governing body of a sub-regional agency and the council of governments enter into an agreement which sets forth the process, timing, and other terms and conditions of the delegated authority.

The amendment also requires HCD to consider regional population forecasts used in preparing regional transportation plans, in addition to Department of Finance population projections, when determining the regional share of the statewide housing need.

### **ANNUAL REPORTING**

Local governments are required to provide annual reports on the status of implementation of the general plan (Government Code Section 65400) to the local governing body. Chapter 796 reinstates the requirement that these reports also be submitted to the Governor's Office of Planning and Research and the Department of Housing and Community Development on or before July 1 of each year. (This requirement had previously been inadvertently amended out of the law.).